

The House Committee on Rules offers the following substitute to SB 2:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to
2 electrical service, so as to allow electric membership corporations to engage in certain
3 activities in order to facilitate the provision of broadband services; to specifically authorize
4 electric membership corporations and their affiliates to provide broadband services; to
5 provide for and revise definitions; to authorize certain financing and partnerships for the
6 provision of broadband services; to prohibit cross-subsidization between the provision of
7 broadband services and an electric membership corporation's natural gas activities or
8 electricity services activities; to provide for declaratory judgment actions for violations of
9 cross-subsidization prohibitions and the procedures governing such actions; to provide
10 certain rights, powers, and benefits to broadband affiliates of electric membership
11 corporations; to require certain rates, terms, and conditions for pole attachments between
12 communications service providers and electric membership corporations and their broadband
13 affiliates; to permit the use of electric easements for broadband services; to provide for
14 legislative findings and declarations as to certain utility easements; to provide for related
15 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

16 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

17 **SECTION 1.**

18 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,
19 is amended by revising Code Section 46-3-171, relating to definitions relative to electric
20 membership corporations and foreign electric cooperatives, as follows:

21 "46-3-171.

22 As used in this article, the term:

23 (1) 'Address' means a complete mailing address, including, whenever practicable, street
24 and number or building and floor.

25 (2) 'Articles of incorporation' means the original or restated articles of incorporation or
26 articles of consolidation and all the amendments thereto, including articles of merger, and

27 also includes what have been designated by the laws of this state prior to July 1, 1981,
28 as charters.

29 (2.1) 'Broadband affiliate' means any person which directly or indirectly controls, is
30 controlled by, or is under common control of one or more electric membership
31 corporations and which is used to provide broadband services.

32 (2.2) 'Broadband facilities' means any facilities and equipment utilized to provide or
33 support broadband services.

34 (2.3) 'Broadband services' means a wired or wireless service that consists of the
35 capability to transmit data at a rate not less than 200 kilobits per second to and from end
36 users and in combination with such service provides:

37 (A) Access to the internet;

38 (B) Computer processing, information storage, or protocol conversion; or

39 (C) Any application or information content to be provided over or through broadband.

40 Such term shall include any broadband facilities and equipment associated with providing
41 such a service.

42 (2.4) 'Communications service provider' means a provider of cable service as defined in
43 47 U.S.C. Section 522(6), telecommunications service as defined in 47 U.S.C. Section
44 153(53), or information service as defined in 47 U.S.C. Section 153(24), as each such
45 term existed on January 1, 2019.

46 (2.5) 'Electric easement' means a right of way or an easement, whether acquired by
47 eminent domain, prescription, or conveyance, that is used or may be used for
48 transmitting, distributing, or providing electrical energy and services by utilizing
49 aboveground or underground wires, cables, lines, or similar facilities.

50 (3) 'Electric membership corporation' or 'EMC' means an electric membership
51 corporation organized under this article or any prior electric membership corporation law
52 of this state, or a corporation which elected, in accordance with the provisions thereof,
53 to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

54 (4) 'Federal agency' includes the United States of America and any department,
55 administration, commission, board, bureau, office, establishment, agency, authority, or
56 instrumentality thereof.

57 (5) 'Foreign electric cooperative' means a cooperative, nonprofit membership corporation
58 organized under laws other than the laws of this state for the same or similar purposes for
59 which an electric membership corporation may be organized under this article.

60 (5.1) 'Gas activities' shall have the same meaning as provided for in Code
61 Section 46-4-152.

62 (5.2) 'Gas affiliate' shall have the same meaning as the term 'EMC gas affiliate' provided
63 in Code Section 46-4-152.

64 (6) 'Insolvent' means that an electric membership corporation is unable to pay its debts
 65 as they become due in the usual course of its business or that it has liabilities in excess
 66 of assets.

67 (7) 'Member' means a person ~~who that~~ has met the requirements and conditions of
 68 membership in an electric membership corporation which are set forth in this article and
 69 in the articles of incorporation and bylaws of an electric membership corporation.

70 (8) 'Person' includes any natural person; firm; association; electric membership
 71 corporation; ~~foreign electric~~ cooperative; corporation, ~~either domestic or foreign~~; business
 72 or other trust; partnership; limited liability company; federal agency; state or political
 73 subdivision thereof; ~~or~~ body politic; ~~or~~ other entity recognized by law.

74 (8.1) 'Retail broadband services' means any broadband services other than those provided
 75 for:

- 76 (A) The internal use of an electric membership corporation;
- 77 (B) The internal use of another electric membership corporation;
- 78 (C) Resale by another electric membership corporation or other communications
 79 service providers; or
- 80 (D) Use as a component part of communications services that other communications
 81 service providers offer to their customers.

82 (9) 'Service' means any service or commodity which an electric membership corporation
 83 may provide under this article for which value is paid."

84 SECTION 2.

85 Said chapter is further amended by revising Code Section 46-3-200, relating to purposes of
 86 electric membership corporations, as follows:

87 "46-3-200.

88 An electric membership corporation may serve any one or more of the following purposes:

- 89 (1) Furnish ~~To furnish~~ electrical energy and service;
- 90 (2) Assist ~~To assist~~ its members in the efficient and economical use of energy;
- 91 (3) Engage ~~To engage~~ in research and ~~to~~ promote and develop energy conservation and
 92 sources and methods of conserving, producing, converting, and delivering energy; ~~and~~
- 93 (4) Provide and operate broadband facilities and provide and use the broadband services
 94 described in subparagraphs (A) and (B) of paragraph (8.1) of Code Section 46-3-171;
- 95 (5) Furnish on a nondiscriminatory basis the broadband services described in
 96 subparagraphs (C) and (D) of paragraph (8.1) of Code Section 46-3-171;
- 97 (6) Form, fund, support, and operate a broadband affiliate, directly or indirectly,
 98 contingent upon compliance with Code Sections 46-5-163 and 46-3-200.2; and

99 (4)(7) Engage To engage in any lawful act or activity necessary or convenient to effect
100 the foregoing purposes."

SECTION 3.

102 Said chapter is further amended by adding new Code sections to read as follows:

103 "46-3-200.1.

104 In order to assist a broadband affiliate in the planning, engineering, construction, extension,
105 provision, operation, repair, and maintenance of broadband services, an electric
106 membership corporation or its broadband affiliate shall be authorized to:

107 (1) Apply for, accept, repay, and utilize loans, grants, and other financing from any
108 person; and

109 (2) Enter into contracts, agreements, partnerships, or other types of business relationships
110 with any person.

111 46-3-200.2.

112 (a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit
113 cross-subsidization between its electricity services activities, its broadband services
114 activities, or its gas activities. To prevent cross-subsidization between broadband services
115 activities and gas activities and between broadband services activities and electricity
116 services activities, any electric membership corporation with a broadband affiliate that
117 provides retail broadband services shall:

118 (1) Fully allocate all costs of electricity services activities and broadband services
119 activities, including costs of any shared services, between electricity services activities
120 and such broadband affiliate's broadband services activities, in accordance with:

121 (A) The provisions of this Code section; and

122 (B) The applicable uniform system of accounts and generally accepted accounting
123 principles that are applicable to electric membership corporations under federal and
124 state laws, rules, and regulations:

125 (2) Not charge any costs of electricity services activities or gas activities to the
126 broadband services customers of the broadband affiliate:

127 (3) Not charge any costs of broadband services activities to the electricity services
128 customers of such electric membership corporation or to the gas activities customers of
129 its gas affiliate; and

130 (4) Not use below-market loans or below-market funding from programs that are not
131 intended to support the deployment of broadband facilities or broadband services in order
132 to support broadband facilities or to provide broadband services unless the electric
133 membership corporation or its broadband affiliate imputes the difference between market

134 rates and the below-market loans or below-market funding into the costs of its broadband
135 facilities and broadband services. The provisions of this paragraph shall not apply to
136 loans or funding from programs that are intended to support the deployment of broadband
137 facilities or broadband services.

138 (b) An electric membership corporation that has a broadband affiliate that provides retail
139 broadband services shall:

140 (1) Not condition the receipt of electricity services upon, nor provide more favorable
141 terms for electricity services in exchange for, persons that receive broadband services
142 from the electric membership corporation or its broadband affiliate;

143 (2) Have a duty to provide access to the ducts, conduits, and easements of such electric
144 membership corporation to all communications service providers on rates, terms, and
145 conditions that are just, reasonable, and nondiscriminatory;

146 (3) Not provide its broadband affiliate or any communications service provider any
147 information obtained from other communications service providers in the pole attachment
148 request and approval process, including without limitation the requested locations for
149 pole attachments, the locations of the customers to be served, or any identifying
150 information regarding such customers;

151 (4) When such electric membership corporation is assisting a customer or potential
152 customer seeking to initiate electricity services and there is any inquiry or discussion
153 regarding the availability of retail broadband services, in the course of the same
154 discussion or transaction in which such assistance is being provided, inform such
155 customer or potential customer of other providers offering broadband services in such
156 customer's area based on any service map of a provider of broadband services or similar
157 resource maintained by any department of the state or federal government and inform
158 such customer or potential customer that broadband services may be obtained from such
159 electric membership corporation's broadband affiliate or such other providers of
160 broadband services. Such information shall be provided only with regard to other
161 providers of broadband services that have notified the electric membership corporation's
162 broadband affiliate, in writing and in a commercially reasonable manner, that such
163 provider of broadband services is able and willing to provide broadband services to
164 customers located within all or a portion of the electric membership corporation's
165 designated electricity service territory; and

166 (5) Develop and maintain a cost allocation manual describing the electric membership
167 corporation's methods of cost allocation between the electric membership corporation's
168 electricity services activities and its broadband services activities. Such cost allocation
169 manual shall be approved by the board of directors of the electric membership

170 corporation prior to the broadband affiliate commencing business as a broadband services
171 provider under this chapter. Such manual shall:

172 (A) Establish rules for the pricing of transactions at fair market value between an
173 electric membership corporation and its broadband affiliate, including the transfer of
174 assets between such electric membership corporation and its broadband affiliate;

175 (B) Require the electric membership corporation and its broadband affiliate to maintain
176 separate books of accounts and records;

177 (C) Be filed at the primary office of the electric membership corporation and be made
178 available for inspection to a communications service provider doing business in
179 Georgia and to the electric membership corporation's members and customers by the
180 electric membership corporation within ten working days of a request therefor from any
181 such communications service provider, member, or customer and in accordance with
182 the provisions of subsection (b) of Code Section 46-3-271; and

183 (D) Be reviewed and revised as necessary or appropriate by the electric membership
184 corporation at least once every five years.

185 46-3-200.3.

186 (a) A communications service provider or a member of an electric membership corporation
187 in good standing shall be authorized to bring an action for declaratory judgment in the
188 superior court of the county in which the principal office of the electric membership
189 corporation is located in accordance with the provisions of subsections (b) through (e) of
190 this Code section in order for such court to determine whether the electric membership
191 corporation has failed to comply with Code Section 46-3-200.2. Such action shall be
192 brought within the calendar year immediately following the calendar year in which the
193 alleged failure to comply with Code Section 46-3-200.2 occurred and reasonably could
194 have been discovered. If the court determines that the electric membership corporation
195 failed to comply with Code Section 46-3-200.2, such court shall be authorized to enter an
196 order requiring the electric membership corporation to remedy such failure within such
197 period as determined by the court. No such action shall be filed as a class action.

198 (b) A superior court judge or senior judge shall preside over the superior court having
199 jurisdiction of a proceeding filed under subsection (a) of this Code section and shall be
200 selected as set out in subsection (c) or (d) of this Code section.

201 (c) Upon the filing of an action under subsection (a) of this Code section, the clerk of the
202 superior court having jurisdiction shall immediately notify the administrative judge for the
203 judicial administrative district in which that county lies or the district court administrator,
204 who shall immediately notify the administrative judge of the institution of proceedings
205 under subsection (a) of this Code section. If the county in which the proceedings were

206 instituted is not in the circuit of the administrative judge, the administrative judge shall
207 select a superior court judge from within the district, but not from the circuit in which the
208 proceeding was instituted, or a senior judge not a resident of the circuit in which the
209 proceeding was instituted to preside over the proceeding.

210 (d) If the administrative judge is a member of the circuit in which the proceeding was
211 filed, or if the other judges of the district are unable or unwilling to preside over the
212 proceeding, or if the other judges of the district are judges of the circuit in which the
213 proceeding was filed, then the administrative judge shall select an administrative judge of
214 an adjoining district to select a superior court judge from that district or a superior court
215 judge from the district in which the proceeding was filed, but not from the circuit in which
216 the proceeding was filed, or a senior judge who is not a resident of the circuit in which the
217 proceeding was filed.

218 (e) After a judge has agreed to preside over the proceeding, the administrative judge who
219 selected the judge to hear the matter shall enter an order in the superior court of the county
220 in which the proceeding was filed appointing such judge, and such judge shall promptly
221 begin presiding over such proceedings in such court and shall determine same as soon as
222 practicable. Such judge shall be reimbursed for his or her actual expenses for food and
223 lodging and shall receive the same mileage as any other state officials and employees.
224 Senior judges shall be entitled to compensation and reimbursement as the law provides for
225 senior judge service.

226 (f) The judge presiding over a proceeding filed under subsection (a) of this Code section
227 may appoint a special master for the purpose of ascertaining and determining whether the
228 electric membership corporation has failed to comply with Code Section 46-3-200.2 and
229 making a recommendation to such judge. In the order appointing the special master, the
230 court shall give such directions for notice and the service thereof, as well as for the time
231 in which any hearing must be held by the special master and recommendations issued, as
232 are just and appropriate under the circumstances and as are consistent with this Code
233 section. Any special master so appointed must be a competent attorney at law in good
234 standing and have at least three years' experience in the practice of law.

235 46-3-200.4.

236 Broadband affiliates shall have all of the rights, powers, and benefits granted to other
237 entities under the provisions of Title 14 and shall not be subject to any restrictions
238 contained in this article, except that a broadband affiliate shall:

239 (1) Only serve the purposes of developing, providing, furnishing, or promoting
240 broadband facilities and broadband services, or a combination of such purposes; and
241 (2) Be subject to the provisions of Code Section 46-3-200.2.

242 46-3-200.5.

243 (a) As used in this Code section, the term:

244 (1) 'Existing agreement' means a pole attachment agreement or joint use agreement in
245 effect as of January 1, 2019.

246 (2) 'New agreement' means a pole attachment agreement or joint use agreement that was
247 not in effect as of January 1, 2019.

248 (b) Except as required by the Tennessee Valley Authority for its distributors in this state,
249 a communications service provider that has an existing agreement with an electric
250 membership corporation shall have the right, through December 31, 2034, to attach to
251 poles of the electric membership corporation and its broadband affiliate after the expiration
252 of the original period of such existing contract:

253 (1) Upon terms and conditions that are no less favorable than those in such existing
254 agreement; and

255 (2) At rates that shall not exceed the rates in such existing agreement, subject to annual
256 rate adjustments based on the Handy-Whitman Index of Public Utility Construction
257 Costs, and based upon the Consumer Price Index in the event the Handy-Whitman Index
258 of Public Utility Construction Costs is no longer available.

259 (c) Except as required by the Tennessee Valley Authority for its distributors in this state,
260 any new agreement between an electric membership corporation and a communications
261 service provider shall provide for attachments to poles of the electric membership
262 corporation and its broadband affiliate:

263 (A) Upon terms and conditions that are no less favorable than those in existing
264 agreements; and

265 (B) At rates that shall not exceed the highest of those rates in any existing agreement,
266 subject to annual rate adjustments based on the Handy-Whitman Index of Public Utility
267 Construction Costs, and based upon the Consumer Price Index in the event the
268 Handy-Whitman Index of Public Utility Construction Costs is no longer available.

269 (d) An electric membership corporation that terminates, without cause, an existing
270 agreement or new agreement with a communications service provider shall not be
271 permitted to form or utilize a broadband affiliate for a period of one year from the date of
272 the termination of any such agreement, if the number of poles with attachments under such
273 terminated agreement constitutes one-half or more of all electric membership corporations'
274 poles containing an attachment by a communications service provider."

275 **SECTION 4.**

276 Said chapter is further amended by adding a new Code section to read as follows:

277 "46-3-205.

278 (a) The General Assembly finds that persons providing broadband services should be
279 permitted to use existing electric easements to provide or expand access to broadband
280 services. The General Assembly also finds that utilizing existing electric easements to
281 provide broadband services, without the placement of additional poles or other ground
282 based structures, does not change the physical use of the easement, interfere with or impair
283 any vested rights of the owner or occupier of the real property subject to the electric
284 easement, or place any additional burden on the property interests of such owner or
285 occupier. Consequently, the installation and operation of broadband services within any
286 electric easement are merely changes in the manner or degree of the granted use as
287 appropriate to accommodate a new technology and, absent any applicable express
288 prohibition contained in the instrument conveying or granting the electric easement, shall
289 be deemed as a matter of law to be a permitted use within the scope of every electric
290 easement.

291 (b) Subject to compliance with any express prohibitions in an electric easement, a provider
292 of broadband services or the owner of an electric easement may use an electric easement
293 to install, maintain, lease, and operate broadband services without incurring liability to the
294 owner or occupant of the real property subject to the electric easement or paying additional
295 compensation to the owner or occupant of the real property subject to the electric easement,
296 so long as no additional poles or other ground based structures are installed; provided,
297 however, that any electric utility owning an electric easement may assess fees and charges
298 and impose reasonable conditions on the use of its facilities within an electric easement for
299 the purpose of providing or supporting broadband services."

300 **SECTION 5.**

301 This Act shall become effective upon its approval by the Governor or upon its becoming law
302 without such approval.

303 **SECTION 6.**

304 All laws and parts of laws in conflict with this Act are repealed.